

REPORT TO: John Carter [Mayor - Far North District Council]

REPORT FROM: John Law [Chair - Independent Complaints Assessment Panel]

DATE: 10 May 2018

SUBJECT: Formal complaint against Cr Dave Hookway - 23 August 2017

1. GENERAL GUIDELINES

1.1 Excerpts taken from a speech given by the University of Humanistic Studies, Hilla University in 2004 include the following points.

1.2 “Principals of Democracy:

- a. A political system for choosing councillors through free and fair elections;
- b. Participation of people in polices and civic life;
- c. Protection of human rights of all citizens; and
- d. Laws and procedures apply equally to all citizens.”

1.3 “Elected representatives are there to represent and listen to the people and respond to their needs and suggestions...a democracy is stronger when citizens become active in political parties and citizens must be free to choose which political party they support...”

1.4 “Rights are guaranteed under international law, e.g.

- a. you have the right to have your own beliefs and to say and write what you think;
- b. No one can tell you what you must think or believe, however;
- c. Every citizen must respect the rights of fellow citizens, and their dignity as human beings;
- d. When you express your opinions, you should also listen to the views of other people, even people you disagree with. Everyone has the right to be heard;
- e. A democracy requires compromise. Groups or individuals with different interests or opinions must be willing to sit down and negotiate. Over time everyone wins something.
- f. An individual or group that is always excluded and fails to be heard may become angry and frustrated.”

1.5 “The principal of freedom of speech does not support unsubstantiated accusations that are defamatory.”

1.6 In 2006 the Auditor General published the “*Good Practice Guide for Local Authority Codes of Conduct*”. We note below and throughout the report, some of his comments which have been relevant in our deliberations.

1.7 “Depending on the council’s objectives, a Code can be an aspirational statement or a rulebook.”

2. BACKGROUND

2.1. The Local Government Act 2002 (LGA) created a new legal requirement for local authorities to adopt a Code of Conduct for its elected members.

2.2. Para 15 of Schedule 7 Part 1 of the Act requires the local authority to set out in its Code of Conduct (‘Code’) the understandings and expectations adopted by the local authority about the manner in which members may conduct themselves while acting in their capacity as members, including behaviour toward one another, staff and the public, as well as the disclosure of information that is received by an elected member in his or her capacity as an elected member.

2.3. Under this legislation all members have a **statutory duty** to comply with the Code of their local authority, but a breach of the Code does not constitute an **offence** under the LGA. It is for Councils to decide whether to enforce the provisions of a Code against an offending member and to determine any penalties for the breach of its Code.

2.4. Councillors are expected to work as a team and to take collective responsibility for decisions made.

2.5. The Far North District Council (FNDC) adopted their Code in 2003 and amended it on 15 December 2017 to incorporate the five values agreed upon by the elected members as the set behaviours by which they will represent the Far North. Cr Hookway was the only councillor to vote against this motion.

- 2.6. It should be noted that these values were adopted after the date of the complaint and therefore the Panel has not commented on whether there have been any breaches in this area.
- 2.7. The FNDC's Code sets out the agreed standards of behaviour between members, members and staff, and members and the public, as well as access to confidential information or information received in their capacity as an elected member.
- 2.8. Any failure by members to act in the manner described represents a breach of the Code.
- 2.9. The Code also sets out the procedures to be followed when a complaint is received regarding a breach of the Code and the penalties that may be handed down if there has been a breach.
- 2.10. At a meeting on 15 December 2017 The FNDC resolved to "... (a) appoint an independent panel of leading civic/community members to consider and rule on Code of Conduct complaints; delegates full powers to the panel to assess and rule on any complaints referred to it; (b) agrees to be bound by the recommendations of the panel ...'.
- 2.11. The Terms of Reference of the 'Independent Complaints Assessment Panel' ('Panel') were approved by the Mayor and CEO of the FNDC on 14 April 2018 and the 3 panel members were appointed immediately thereafter. They are John Law (Chair), Nicole Anderson and Roger Dold.

3. COMPLAINT

- 3.1 On 23 August 2017 the following complaint was received by Shaun Clarke, CEO, from the Strategic Leadership Team on behalf of all staff, against Cr Dave Hookway:

"The contents of a newspaper column dated 22 August 2017 in the Northland Age compromises the integrity of all Council staff, making allegations of corruption and

undermining public confidence in staff and senior management. It further claims that people are scared of retribution by council officers without any supporting evidence. This, we believe, is very damaging to all our reputations and extremely hurtful to all staff, family and friends.

The situation has been aggravated by Cr Hookway posting the article on a number of community websites, greatly increasing the exposure throughout the district.

We as leaders and managers are personally affected by the comments, as are our families, and so are our people. We need to take urgent action to protect the health and safety of our people (and to be seen to be taking action). We therefore request that a formal investigation of a breach of the Code of Conduct be initiated.”

3.2 Following this, the Chief Executive then followed the process provided for in the Members Code of Conduct (refer Code of Conduct Appendix 2, Step 1), seeking to have an investigation on behalf of the staff he employs. Whilst only Members and the Chief Executive may make a complaint under this Code, the complaint made by staff members to the Chief Executive is covered by the scope of the Code (outlined in paragraph 2) which states the Members “Code is concerned with the behaviour of Members towards:

- Each other;
- The Chief Executive;
- Staff;
- The media; and
- The general public”

3.3 In accordance with the Code, FNDC appointed Paul Diver Associates to assess whether there was a matter to be investigated. This assessment was carried out on 7 September 2017 and concluded “*that the complaint was material and should be fully investigated*”.

3.4 The full investigation was undertaken during November 2017 and the Investigation Report was issued by Paul Diver Associates on 13 December 2017, concluding that “*I am unable to establish that this was a serious breach but based on all the*

evidence and information, I am of the view that it had the potential to be serious". It is noted that staff were interviewed but not Cr Hookway who refused on the basis that he did not recognise the legality of the complaint.

3.5 The complaint was then handed over to the Complaints Panel on 14 March 2018 to assess and rule on the Code of Conduct complaint and to make binding recommendations to Council.

3.6 This complaint is about the article Cr Hookway wrote in the Northland Age on 22 August 2017 and the Panel considers that the law and rules in this area are clearly defined.

3.7 The 'Good Practice Guide' quotes the case of *Goulden vs Wellington City Council* where the Judge said "*...the entitlement of a Council member to freely and publicly express an opinion is subject to the limitation that media comments must observe the other requirements of the Code of Conduct*". The Auditor General made the observation that "*as it is appropriate to regard the Code as a lawfully promulgated set of guidelines or rules, this limitation on public criticism of any Council employee in any way can be regarded as a justified and reasonable limit on the entitlement of a Councillor to freely express his or her personal view in the media at any time.*"

3.8 The rules in the FNDC Code are equally clear and are covered in Para 6.2 'Media comment on a member's own behalf'. It states –

"Elected members are free to express a personal view in the media, at any time, provided the following rules are observed:

- *media comments must not state or imply that they represent the views of the Council;*
- *media comments which are contrary to a council decision or policy must clearly state that they do not represent the views of the majority of members;*
- *media comments must observe the other requirements of the Code of Conduct; for example, comments should not disclose confidential information, criticise or compromise the impartiality or integrity of staff;*
- *media comments should not be misleading and should be accurate within the bounds of reasonableness."*

3.9 The other rules that the Panel believe are relevant to this complaint are Para 5.3 – “Relationships with Staff” and Para 7.2 – “Information received in capacity as an elected member”.

3.10 The Code in Paragraph 5.3 states:

“An important element of good governance involves the relationship between the Council and the Chief Executive. Members will respect arrangements put in place to manage the interface between the governing body and its CEO and:

- *raise any concerns about employees, officers or contracted officials with their CEO;*
- *make themselves aware of the obligations that the Council and CEO have as employers and observe those requirements at all times, such as the duty to be a good employer;*

treat all employees with courtesy and respect and avoid publicly criticising any employee;”

3.11 Code of Conduct, paragraph 7.2 states:

“Members will disclose to other members and if appropriate, the Chief Executive, any information received in their capacity as an elected member that concerns the Council’s ability to give effect to its responsibilities. Members who are offered information on the condition that it remains confidential will inform the provider of the information that the member has a duty of disclosure and will decline the information if that duty is likely to be compromised.”

3.12 At the end of each of these three rules the Code states:

“Any failure by members to act in the manner described above represents a breach of this Code.”

4. FINDINGS

- 5.1 Bearing in mind that Cr Hookway has a statutory duty under the LGA to comply with the Code, the Panel considers that based on the three paragraphs quoted above, the following comments made by Cr Hookway in his article are in breach of the Code.
- 5.2 *“...we have had complaints about service, poor communication, obstructive behaviour, and even the occasional whisper of possible corruption”.*
- 5.3 *“Some in the community believe many of the current problems can be traced to the senior leadership team and call for them to be restricted or replaced. If even half of the complaints I have received from the public are true, this must be taken seriously.”*
- 4.4 *“But what has me very concerned is that a council staff member associated with writing the policy has been actively signing people up to a FaceBook page supporting it.”*
- 4.5 *“Claims that people are scared of retribution by council officers are alarming and the council’s current litigious attitude is costing ratepayers a fortune”.*

5. REASONS

- 5.1. All these comments are matters that should have been brought up with the CEO under Para 5.3 – “Relationships with Staff”. In the Panel’s opinion he is in breach of this rule for not raising these concerns with the CEO; for publicly criticising staff; and for exposing the Council to a legal risk of a personal grievance by criticising an employee.
- 5.2. The panel also considers that all four comments noted are in breach of Para 6.2 – “Media comment on a member’s own behalf”. All the comments are critical of the staff and are misleading as they are unsubstantiated.
- 5.3. The Panel considers that all of the comments are also in breach of Para 7.2 – “Information received in capacity as an elected member”. Cr Hookway had a duty to

disclose all this information he received in his capacity of an elected member but chose instead to put it in the media.

5.4. After a review of all the information available to us, our finding is that Cr Dave Hookway has breached the Code.

6. PENALTIES

6.1. The Code states that for material breaches of the Code of Conduct, one of the following penalties may be invoked:

- Letter of censure;
- An apology, private or public;
- Vote of No Confidence;
- Removal of Council fund privileges;
- Restricted entry to Council Offices;
- Dealing confined to Chief Executive only;
- Suspension from committees or other bodies; or
- An invitation to resign from Council.

6.2. However, it may be decided that no penalties will be imposed if the breach is not considered serious.

6.3. On Wednesday 3rd May 2018 the Panel held what it felt was a very worthwhile meeting with Cr Dave Hookway, in which he was supported by ex-councillors Di Maxwell and Steve McNally and current councillor John Vujcich.

6.4. Cr Hookway explained the induction process was limited [refer Auditor General Report clause 2.9].

6.5. Cr Hookway provided the Panel with copies of emails where his concerns were raised with the Chief Executive. It is abundantly clear that Cr Hookway is extremely frustrated by the amount and quality of the information, and at times the lack of such information, that has been provided from staff members as well as the amount of time it takes him to get this information [refer Auditor General Report clause 5.54].

6.6. Cr Hookway is also firmly of the belief that there is a concerted effort by certain members and council staff to side-line him by withholding information that has been requested. He provided the Panel with four examples to support his position.

6.7. The reality under the Code is that very little can be achieved by way of penalties because Cr Hookway does not have special privileges that can be taken away, he does not represent Council on separate organisations or chair meetings and we believe that Cr Hookway is not of a mind to apologise as he does not believe he has done anything wrong.

6.8. The Panel has taken a pragmatic approach to penalties as we simply do not believe that any of them will have a meaningful effect on the current situation and will not result in any positive outcomes or benefits for Cr Hookway, the Council or the staff. We therefore do not advocate FNDC imposing any of the specified penalties on Cr Hookway.

6.9. A practical suggestion would be for FNDC to hold an in-house training course for all councillors to make them aware of their statutory obligations under the LGA [Auditor General Report clause 5.33]. This workshop could review the team approach and address the processes presently in place to achieve their objectives.

6.10. It should also be noted that under common law, anyone who considers themselves defamed may take appropriate legal action through the courts, regardless of the Code of Conduct.

6.11. Under Employment law any staff member can take a personal grievance against the FNDC through the Employment Relations Authority [refer Auditor General Report 2.11].

7. CONCLUSION

7.1. The statements made by Cr Hookway in his media article do not name anyone directly, instead he uses unsubstantiated innuendoes to achieve his outcomes.

- 7.2. Publishing columns that consistently criticise Council has had the effect of Cr Hookway losing the support of other councillors and senior staff which means that he could be less effective as a Councillor representing the constituents.
- 7.3. In fairness to Cr Hookway the Panel feels that if he did not have the level of frustrations with Council that he displayed at the interview, the tone of his media articles would be far less confrontational and would probably be written in a way that may not be objectionable to Council or the staff.
- 7.4. This complaint process has been going on for over eight months which is far too long and as a result has been stressful to all parties. See our further comments in Appendix 1.
- 7.5. We suggest that Cr Hookway has a meeting with the Chairman of this Panel, the Mayor, and Chief Executive to discuss a way forward to ensure open communication and how everyone's concerns can be addressed in a timely manner. This meeting should be held within two weeks of the date of this report.
- 7.6. Following the finalisation of this report, the Chair of the Panel will handle any Media enquiries and press releases should not be put out by Council.

Signed:

John Law
Chairman

Nicole Anderson
Panel Member

Roger Dold
Panel Member

APPENDIX 1

Time taken to investigate complaints

This complaint has taken 8 months to get to where it is today, and it is the Panel's recommendation to the Council that the process can be simplified by:

- (i) Remediating the complaint quickly at the lowest possible level.
- (ii) If it cannot be resolved 'one on one', refer the complaint to the Complaint Panel for its initial determination.
- (iii) If required, a full investigation by the Complaint Panel may be undertaken.

This will undoubtedly give a quicker outcome at a significantly lower cost also resulting in less stress for all parties. The Code of Conduct complaints process should also be amended accordingly.

APPENDIX 2

Code of Conduct – “Aspirational or Rulebook”

- 5.1 The Local Government Act 2002 created a new legal requirement for local authorities to adopt a Code of Conduct for its local members. Councils have discretion on how they design the Code. The Audit Office says that Codes can be an “aspirational statement” or a “rule Book”.
- 5.2 Councillors are not subject to employment law and are not able to be removed from office by their peers.
- 5.3 Members have a statutory duty to comply with the Code of their local authority, but a breach of the Code does not constitute an offence under the LGA.
- 5.4 The Act has given councils the powers to penalise members who do not comply with their Codes of Conduct, but the reality is that these penalties will in most cases be ineffectual.
- 5.5 To quote from the ‘*Good Practice Guide*’, “Some councils who have been through a formal enforcement process end up bitter and frustrated. The process can be stressful, time consuming, expensive, exhausting and inconclusive. Relationships between members and staff can be put under heavy strain and the issues are never fully resolved and penalties that are able to be imposed are insignificant.”
- 5.6 “The Audit Office does not consider that Code complaints necessarily indicate that a council is dysfunctional as it only takes one disruptive person to create difficulties. Code of Conduct issues can be particularly upsetting for local government as the structures of local government are not designed in the same adversarial way as central government. A small minority of councillors will not accept standards and roles expected of them and are not prepared to work as a team and are unlikely to change after disciplinary proceedings.”
- 5.7 Against this background, the Panel is of the view that it may well be in the interests of the FNDC to revisit its Code which is by its nature very prescriptive. Discussions with the Office of the Auditor General indicate that they have examples of Codes of Conduct that are “aspirational” which may assist Council in its review of the Code of Conduct.